

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

UNITED STATES OF AMERICA,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. §1324a Proceeding
	)	Case No. 93A00130
COLLISION REPAIR CENTER, INC.,	)	
A Kansas Corporation,	)	
Respondent.	)	

FINAL DECISION AND ORDER GRANTING JUDGMENT BY DEFAULT

(September 24, 1993)

MARVIN H. MORSE, Administrative Law Judge:

Appearances: Joseph R. Dierkes, Esq., for Complainant.  
Ronald D. Taylor, pro se.

On June 28, 1993, the Immigration and Naturalization Service (INS or Complainant) filed its Complaint, dated June 23, 1993. The Complaint includes an underlying Notice of Intent to Fine (NIF), served by INS upon Respondent on April 9, 1993. Count I charges Respondent with knowingly hiring/continuing to employ one individual. The civil money penalty assessed for Count I is \$800. Count II charges Respondent with failure to ensure that employee properly completed Section 1 of the Form I-9 for one individual. The civil money penalty assessed for Count II is \$280. INS demands a total of \$1,080 in civil money penalties. Exhibit A to the complaint is Respondent's undated request for hearing. [Notably, although Exhibit A appears to be addressed to the allegations of the NIF, nowhere does it in terms or by necessary implication request a hearing. However, INS and OCAHO have treated it as such a request].

On July 2, 1993, this Office issued a Notice of Hearing which transmitted the Complaint to Respondent. The Notice cautioned Respondent that failure to answer the Complaint within thirty days of receipt might result in a waiver of the right to appear and contest Complainant's allegations. Respondent was explicitly warned that absent a timely Answer, the judge might "enter a judgment by default along with any and all appropriate relief." The Notice of Hearing was served on Ronald D. Taylor, President of Respondent, on July 9, 1993, by certified mail, as confirmed by the signed delivery receipt returned to this Office by the U.S. Postal Service.

By motion dated August 24, 1993, filed August 27, 1993, Complainant asserts that Respondent is in default of his obligation to file a timely Answer to the Complaint and asks for entry in its favor of a decision and order on default. To date, no Answer has been filed with this Office.

At procedural junctures such as the case had reached at that point, it is my general practice to issue orders to show cause why judgment on default should not be entered. Such orders afford respondents an opportunity to explain a failure to have timely answered a complaint. See e.g., U.S. v. Zeferino Castillo, 3 OCAHO 505 (4/1/93); U.S. v. Cruz, OCAHO Case No. 92A00247 (3/18/93); U.S. v. Kim Dong Hui t/a Chestnut Gourmet Restaurant West, 3 OCAHO 479 (12/19/92); U.S. v. Vigilante, Inc., "Hercules" Jorge Gonzalez, Owner, OCAHO Case No. 92A00095 (9/25/92); U.S. v. Joseph Lemma, d/b/a J & L Landscaping, OCAHO Case No. 91100205 (2/21/92); U.S. v. Sam Estee Sportswear, Inc., OCAHO Case No. 91100132 (11/13/91); U.S. v. Flat Knitting Mills Co., Inc., OCAHO Case No. 91100047 (9/5/91); U.S. v. Sea Dart Trading Corp., OCAHO Case No. 91100019 (5/6/91); U.S. v. Lee & Young Co., Inc., OCAHO Case No. 91100348 (4/17/91); U.S. v. Huggems, Inc., OCAHO Case No. 91100008 (4/15/91); U.S. v. Elena Finishing, Inc., 1 OCAHO 132 (2/22/90); U.S. v. Elsinore Manufacturing, Inc., 1 OCAHO 5 (5/20/88).

I issued such an order in this case on August 30, 1993, requiring Respondent to show cause why it had not filed its answer in a timely fashion, i.e., within 30 days after the July 9, 1993 receipt of the Notice of Hearing. The Order granted Respondent until September 15, 1993 to file an explanation. To date, Respondent has not filed an explanation.

The Rules of Practice and Procedure of this Office state that a respondent shall file an answer with thirty (30) days after service of a complaint, 28 C.F.R. §68.9(a) [1992]; the administrative law judge is authorized to enter a judgment by default if a respondent fails to file its answer within the time provided. 28 C.F.R. §68.9(b). See U.S. v. Prime Landscape Management, Inc., 1 OCAHO 204 (7/25/90). The Notice of Hearing and my Order of August 30, 1993 advised Respondent to the same effect.

I find Respondent in default, having failed to timely plead or otherwise defend against the allegations of the Complaint, and having failed to establish good cause as required by the August 30 Order to Show Cause.

IT IS HEREBY ORDERED:

1. that the hearing in this proceeding is canceled;

2. that as alleged in the Complaint, Respondent is in violation of 8 U.S.C. §§1324a(a)(1)(A) and 1324a(a)(2) with respect to the employee named in the complaint as to whom Respondent is found to have knowingly hired/continued to employ (Count One) and 8 U.S.C. §1324a(a)(1)(B), failed to ensure that employee properly completed section 1 of the employment eligibility verification form (Form I-9) (Count Two);

3. that Respondent pay a civil money penalty in the amount of One thousand eighty dollars (\$1,080) for the violations charged in the complaint.

4. that Respondent shall cease and desist from further violations of 8 U.S.C. §1324a.

This Decision and Order Granting Judgment by Default is the final action of the judge in accordance with 28 C.F.R. §68.53(a). As provided at 8 U.S.C. §1324a(e)(7), this action shall become the final decision and order of the Attorney General unless the Chief Administrative Hearing Officer modifies or vacates this Decision and Order within thirty (30) days from this date.

SO ORDERED.

Dated and entered this 24th day of September, 1993.

  
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Marvin H. Morse  
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the attached Decisiona and Order Granting Judgment By Default were mailed first class, postage prepaid this 24th day of September, 1993 addressed as follows:

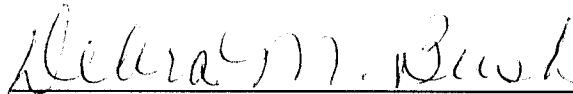
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Respondent

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